



23 OCT 2002

Mr. Robert Kestenbaum  
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In re Application of :  
Blaschke et al. :  
Application No.: 09/868,996 : DECISION  
PCT No.: PCT/EP99/09950 :  
Int. Filing Date: 15 December 1999 : ON  
Priority Date: 22 December 1998 :  
Attorney Docket No.: (E) 1689 PCT : PETITION  
For: Fuel Dosing Pump Of A Heating Device, :  
Especially An Automobile Water Or Air :  
Heating Device With A Control Device :

This is in response to applicant's "Petition To Withdraw Holding Of Abandonment" filed on 24 June 2002.

### **BACKGROUND**

This international application was filed on 15 December 1999 and claimed an earliest priority date of 22 December 1998. The International Bureau transmitted a copy of the published international application to the USPTO on 29 June 2000. A Demand electing the United States was filed prior to the elapse of 19 months from the priority date. Consequently, the 30 month period for payment of the basic national fee in the United States expired as of midnight on 22 June 2001.

On 20 June 2001, applicant filed, *inter alia*, the basic national fee.

On 20 July 2001, a Notification Of Missing Requirements (Form PCT/DO/EO/905) was mailed to applicants, requiring the filing of an English translation of the international application, an executed oath or declaration of the inventors in compliance with 37 CFR 1.497 (a) and (b), a surcharge under 37 CFR 1.492(e), and a processing fee under 37 CFR 1.492(f). The Notification Of Missing Requirements was accompanied by a Notice of Defective Translation (Form PCT/DO/EO/913) indicating that the text in the drawings had not been properly translated, and by a Notification Of A Defective Oath or Declaration (Form PCT/DO/EO/917) indicating that the declaration had not been executed.

On 31 May 2002, a Notice of Abandonment Under 37 CFR 1.53 (f) or (g) was mailed to applicant, indicating that this application "is abandoned for failure to timely or properly reply to the Notice To File Missing Parts (Notice) mailed on 07/20/2001. No reply was received."

On 24 June 2002, applicant filed the instant petition.

### DISCUSSION

The petition is accompanied *inter alia* by copies of a Transmittal Letter (including fee calculation sheet and fee authorization), a signed declaration, a letter regarding the translation, a copy of page 16 of the translation, a certificate of mailing under 37 CFR 1.8, and a copy of a return postcard receipt stamped as received by the USPTO on "09 JAN 2002" and itemizing *inter alia* a declaration and a "response to Notice of Defective Translation." MPEP 503 states in part that "A postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO." Thus, the postcard stamped as received on 09 January 2002 constitutes *prima facie* evidence of receipt of the enumerated items on that date. Accordingly, the copies of, *inter alia*, the certificate of mailing under 37 CFR 1.8, the declaration and the "response to Notice of Defective Translation" filed on 24 June 2002 will be accepted as copies of the papers as filed on 09 January 2002.

The certificate of mailing was dated October 22, 2001. The Notification of Missing Requirements mailed on 20 July 2001 set a two-month period for reply. Thus, since 22 October 2001 was a Monday, a one-month extension of time is necessary in order for the correspondence to be considered timely. The statement in the transmittal letter filed on 20 July 2001 to charge any necessary fees is treated under 37 CFR 1.136(a)(3) as a constructive petition for the extension of time. The fee has been charged to counsel's deposit account. Accordingly, the response is treated as timely and the Notification of Abandonment dated 31 May 2002 is hereby VACATED.

### DECISION

The petition is GRANTED.

This application is being forwarded to the National Stage Processing Branch for further processing. The date of this application under 35 U.S.C 371 is 09 January 2002.



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